

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
Civil Action No. 1:17-cv-00854-TDS-LPA

REBECCA KOVALICH and SUZANNE )  
NAGELSKI, )

Plaintiffs, )

v. )

PREFERRED PAIN MANAGEMENT & )  
SPINE CARE, P.A., DR. DAVID SPIVEY, )  
individually, and SHERRY SPIVEY, )  
individually. )

Defendants. )

**Exhibit 5**

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FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
CIVIL ACTION NO. 1:17-cv-00854-TDS-LPA

REBECCA KOVALICH and SUZANNE )  
NAGELSKI, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
PREFERRED PAIN MANAGEMENT & SPINE )  
CARE, P.A., DR. DAVID SPIVEY, )  
individually, and SHERRY SPIVEY, )  
individually, )  
 )  
Defendants. )  
\_\_\_\_\_ )

D E P O S I T I O N

OF

WENDY YONTZ

At Winston-Salem, North Carolina

Tuesday, August 28, 2018

REPORTER: ELAINE F. HAYES  
Notary Public

**REED & ASSOCIATES**  
2401 Whirlaway Court  
Matthews, NC 28105  
980-339-3575

1 Q. And who is his wife?

2 A. Sherry Spivey.

3 Q. Are you related to either Dr. -- well, are you  
4 related to Dr. and Mrs. Spivey?

5 A. Yes.

6 Q. And explain that, as best you can. What's the  
7 relation?

8 A. My stepdad is Sherry Spivey's brother.

9 Q. And what's your stepdad's name?

10 A. Daryl Huffman.

11 Q. Are you related to any other current employees at  
12 PPM?

13 A. Jennifer McGraw.

14 Q. What does Jennifer McGraw do there?

15 A. She assists with the marketing. She helps Laura  
16 Schumacher.

17 Q. Is she the marketing director?

18 A. I am not sure of her job title.

19 Q. And what does she do to assist Laura Schumacher?

20 A. She assists her with creating brochures.

21 Q. Anything else?

22 A. Not that I know of.

23 Q. Are you aware of any other work, aside from what you  
24 described, that Jennifer Spivey does for PPM?

25 A. I believe she assists Laura with monitoring the

1 website.

2 Q. What all does that entail?

3 A. I do not know.

4 Q. And what's that belief based on, if she does that?

5 A. From conversations with Jennifer and Laura.

6 Q. How often is Jennifer in the office?

7 A. She's not.

8 Q. Is she on the payroll?

9 A. Yes.

10 MR. HERRMANN: Let's go ahead and take a short  
11 break.

12 (Recess from 10:20 a.m. to 10:35 a.m.)

13 By Mr. Herrmann:

14 Q. Before the break, I asked you kind of about your  
15 relation to Mrs. Spivey, and you said that your  
16 stepdad, Daryl Huffman, is her brother; is that  
17 right?

18 A. Yes.

19 Q. Did he adopt you?

20 A. Yes.

21 Q. We're going to kind of go into your move from Belk to  
22 PPM. Just generally, and we'll get into more  
23 specifics, why did you leave Belk to go to PPM?

24 A. I was looking for something different. Retail and  
25 the holidays are awful.

1 Q. And did you reach out to PPM or did PPM reach out to  
2 you?

3 A. I had talked to Sherry -- we've discussed it quite a  
4 few times, that they were thinking of hiring or they  
5 needed HR in-house there at the location at all  
6 times. I didn't really pursue it. We talked about  
7 it for about a year.

8 Q. You and Sherry?

9 A. Yeah. And change is kind of scary, so --

10 Q. All right. When did you start at PPM?

11 A. November 2015.

12 Q. And just so I've got the time period right, you think  
13 from around November 2014 to November 2015 you were  
14 having off and on conversations with Sherry Spivey  
15 about coming to do the in-house HR at PPM?

16 A. Yes.

17 Q. About how often would you have those conversations?

18 A. They only occurred about three times during that time  
19 period.

20 Q. And do you recall who suggested that you come there  
21 first? I mean, I take it you didn't know about their  
22 HR needs, so I'm asking, did Sherry contact you first  
23 about coming and doing HR at PPM?

24 A. No. I had went to her house, and she asked just in  
25 conversation what I was doing. You know, I said I

1           was still doing HR, and she had mentioned again that  
2           they do need somebody in-house.

3       Q.   When did this conversation happen where you went to  
4           her house?

5       A.   It was warm weather.

6       Q.   Maybe summer of 2015?

7       A.   May have been the spring.

8       Q.   And then you said you probably had about three  
9           conversations with Sherry about that. Would I be  
10          right that the first one was in roughly  
11          November of 2014 like we talked about?

12      A.   Yes.

13      Q.   What do you remember about the first conversation?

14      A.   It was basically me complaining of the holidays in a  
15          retail store and Sherry discussing their need for  
16          someone on location, and I had mentioned, you know,  
17          that change was scary and I was trying to stay where  
18          I was at.

19      Q.   I understand how, in a retail store, they're busier  
20          around the holidays. How does that impact the HR  
21          department?

22      A.   With Belk, there is no one job. You assist in all  
23          areas, so I would open and close the store. Some  
24          days I was the only one there with a key, so I had to  
25          manage the floor as well.

1 holiday in retail.

2 Q. When do you think you called her and asked her about  
3 that?

4 A. September of 2015.

5 Q. Okay. Between spring of 2015 and September of 2015,  
6 basically between that conversation that you  
7 described at her house and when you called her, had  
8 you had other discussions with her about joining PPM?

9 A. I'm sorry. Would you repeat those dates again?

10 Q. Sure. From your conversation with Mrs. Spivey at her  
11 house in roughly the spring of 2015 until this  
12 September call where you called her and asked about a  
13 position at PPM, were there any conversations in the  
14 middle with her about joining PPM?

15 A. I'm sure there was.

16 Q. Just kind of off and on talked about it?

17 A. In passing. You know, "We're still looking for  
18 someone."

19 And I would not be willing to make a change  
20 for a while, so I'd say, "No, thank you."

21 Q. But she would just every now and then ask you, and  
22 you would say, "No, thank you"?

23 A. Just when we would see each other and we would talk  
24 about work.

25 Q. How often do you see each other?

1 A. Then?

2 Q. Yes.

3 A. Maybe five or six times a year.

4 Q. Prior to starting at PPM, did you have conversations  
5 with Dr. Spivey about joining PPM?

6 A. He was present for the conversation that occurred in  
7 November of 2014.

8 Q. I know he was present. Did he have any input into  
9 that decision or into that conversation?

10 A. Yes.

11 Q. What did he say?

12 A. He just told me their need of needing someone there  
13 at the office to handle employee issues and to  
14 discuss the benefits with employees and to know a  
15 little more of what's going on.

16 Q. Aside from that conversation, any other conversations  
17 with Dr. Spivey about joining PPM prior to you  
18 starting there?

19 A. Not that I recall.

20 Q. Okay. Any discussions with anyone else at PPM about  
21 going to work for PPM prior to starting there?

22 A. No.

23 Q. So your primary contact for that was Sherry Spivey?

24 A. Yes.

25 Q. It sounds like you reached out to her in



1           September of 2015, and correct me if I'm wrong, but  
2           with the holiday coming up, for the first time, you  
3           were kind of ready to make that kind of scary change.  
4           Is that right?

5   A.   Correct.

6   Q.   What happened next?

7   A.   Sherry told me that she would talk to Dr. Spivey and  
8           Suzanne and she would get back with me. And she  
9           asked me to send my resume.

10  Q.   And did you do that?

11  A.   Yes.

12  Q.   Do you think that was also in September of 2015?

13  A.   I don't recall.

14  Q.   Sometime between September and when you started?

15  A.   Yes.

16  Q.   That's close enough. What was the next thing that  
17           happened?

18  A.   Sherry called me and offered me the position.

19  Q.   How long before you started do you think you got the  
20           call from Sherry where she offered you the position?

21  A.   How long before I started --

22  Q.   I'm sorry. Did you receive that offer call like two  
23           weeks before, a week before? Did you start right  
24           away? That's all I'm asking.

25  A.   Maybe a month.

1 Q. All right. And who are the folks in Greensboro doing  
2 that?

3 A. Angel Joel.

4 Q. Angel Joel?

5 A. Yes. Jessica White and Sontara Barr-Poole.

6 Q. Just so I'm clear on this, when you first came to  
7 Dr. Spivey with your recommendation about the  
8 [REDACTED] role back in 2016, was your  
9 recommendation that both positions could be  
10 eliminated and it could be automated?

11 A. Yes.

12 Q. And was his position that, "We should at least keep  
13 one person to have the human touch"?

14 A. Yes.

15 Q. Any other disagreements that he had, that you can  
16 recall, with a position elimination analyses that you  
17 did?

18 A. No.

19 Q. As part of this reorganization, do you use any sort  
20 of metrics to keep for the termination decisions?

21 A. Explain what you mean by that.

22 Q. Are there any kind of overarching criteria that apply  
23 to the reorganization in terms of whose position is  
24 eliminated and whose is not?

25 A. No.

1 Q. Has there been any formal kind of cost breakdown of  
2 the different positions to decide, you know, who can  
3 be eliminated and who is not going to be eliminated?

4 A. I don't recall any.

5 Q. Does PPM use any -- kind of the same question -- any  
6 overarching criteria for who's hired during the  
7 reorganization?

8 A. No. Just qualifications.

9 Q. Have you ever analyzed whether Jennifer McGraw's  
10 position -- have you ever analyzed the position that  
11 Jennifer McGraw is currently in as part of the reorg?

12 A. Yes.

13 Q. What was your analysis?

14 A. That that doesn't require a full-time position.

15 Q. Okay.

16 A. However, I'm not sure what she -- what it entails.  
17 You know, she doesn't work in the office.

18 Q. Did you ever ask anyone else at work what it entails  
19 that she's doing?

20 A. Mary Benton.

21 Q. And what did she say?

22 A. This was during a time that Jennifer and Laura were  
23 working on a new brochure, and I was curious as to  
24 what her input was.

25 Q. And what did she say?

1 A. She just told me what they were working on.

2 Q. And that was Mary Benton?

3 A. Yes.

4 Q. And did she describe to you that Jennifer McGraw was  
5 working with Laura Schumacher on a new brochure? I  
6 just want to clarify that's what she told you.

7 A. Yes.

8 Q. All right. Did you make a recommendation to Mary  
9 Benton that her position be eliminated as part of the  
10 reorganization? And by "her," I mean Jennifer  
11 McGraw's position.

12 A. No.

13 Q. Have you ever made that recommendation to anyone  
14 about Jennifer McGraw's position?

15 A. No.

16 Q. Have you ever discussed switching her to like  
17 contract worker status with anyone at PPM?

18 A. Myself and Mary have discussed that.

19 Q. And what are the details of those discussions?

20 A. I don't go into detail. I tell her to talk to  
21 Dr. Spivey about that.

22 Q. How many times do you think you've done that?

23 A. Twice.

24 Q. Do you know the result?

25 A. I do not.

1 Q. Now, we've talked a lot about the analyzes that  
2 you've done for the reorg, but just to be clear, you  
3 don't have ultimate termination power at PPM, do you?

4 A. No.

5 Q. And who would have that?

6 A. Dr. Spivey.

7 MR. HERRMANN: Let's take one more break, and  
8 then we'll finish. All right?

9 THE WITNESS: Okay.

10 (Recess from 11:31 a.m. to 11:46 a.m.)

11 By Mr. Herrmann:

12 Q. Ms. Yontz, did you give any input into the decision  
13 to eliminate Sue Nagelski's position?

14 A. No.

15 Q. Did you have any input into the decision to eliminate  
16 Ms. Kovalich's position?

17 A. No.

18 Q. I'll just ask those a different way. Did you have  
19 any input into the decision to terminate  
20 Ms. Nagelski?

21 A. No.

22 Q. Did you have any input into the decision to terminate  
23 Ms. Kovalich?

24 A. No.

25 MR. HERRMANN: I'm just going to review my